

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1556 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

=====

1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

PREETY NAVINCHANDRA SHAH

Versus

PROJECT DIRECTOR

Appearance:

MR NM KAPADIA for Petitioner
MR PARESH UPADHYAY for Respondent No. 1
M/s Patel Advocates for Respondent No. 3

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 27/04/2000

ORAL JUDGEMENT :

1. Rule. M/s Patel Advocates waive service of the rule.

2. The petition is filed for the relief to the effect that the order of termination dated 9/10.3.2000, at Annexure 'G' be quashed and set aside, whereby the services of the petitioner are terminated with immediate effect. It is also mentioned in the said order that the petitioner is paid a cheque amounting to Rs.15,000/- in lieu of one month's notice as provided under Rule 3 of the agreement made with her at the time of her appointment.

3. It is the case of the petitioner that the petitioner came to be appointed as Deputy Director under an agreement entered into between the petitioner and respondent no.1, a copy of which is annexed at Annexure 'E' to the petition. Clause 3 of the said agreement reads as under :

"In case of unsatisfactory performance by and of an employee, the service/ appointment of the employee shall be terminated, during the tenure of service, by giving one month's notice by the Society/ second party or salary in lieu thereof. The employee may, if he/ she so desire resign prematurely during the service tenure by giving one month's notice to the Society/ Second party or salary in lieu thereof."

Clause 7 of the said agreement is also reproduced hereunder:

"The appointment/ recruitment of the employee shall be on contractual basis. His said appointment is for a stipulated time period as stated in clause (2) of this agreement. The employee shall have no legal rights whatsoever for continuation/ retention/ reappointment in service of the Society/ Second Party. That the decision of the Society/ Second Party with respect to any termination of an employee whether during the tenure of service or on lapse of period of one year for which appointment is made, in either case, shall be final and the employee will not be entitled to claim any right for such continuation/ reappointment and THE DECISION OF THE SOCIETY IN CASE OF TERMINATION OF AN EMPLOYEE SHALL BE FINAL AND NO CLAIM IN RESPECT OF THE SAME SHALL BE ENTERTAINED. (The employee hereby undertakes that he/ she shall not claim any right or lieu on the post for which he has been so appointed on temporary and contractual basis, if his/ her services are sought to be terminated by

the Society/ Second Party and the decision of the Society/ Second Party with respect to such termination/ action shall be final)."

It is the case of the petitioner that once the petitioner was given appointment for a period of one year under that agreement, it was not open to respondent no.1 to issue the impugned order and terminate her services, more particularly, when the impugned order does not mention that her services are terminated on account of her unsatisfactory performance. The petitioner also submitted that the appointment order dated 20.9.1999, Annexure 'D' mentions that the appointment of the petitioner is subject to the terms and conditions specified in the draft agreement for a period of not exceeding one year in the first instance from the date she joins the post. In view of that specific term that she was appointed for a period of one year, the order at Annexure 'G' is vitiated. The petitioner submitted that in fact the reasons which have weighed with respondent no.1 for issuing the impugned order are set out in para 3. It is the case of the petitioner that as the petitioner is having very good expertise and experience of about 16 years in the field of IEC, which no one in the whole organisation of respondent no.1 possesses, make the petitioner a subject of envy. Therefore, the impugned order is passed by respondent no.1 is bad. It is also mentioned in the same para that most of all the office bearers were male members and the petitioner is the only lady, who had qualification of IEC, which is not possessed by any one of the male members, is also one of the reasons which weighed with the respondents to pass the said order. Lastly, it is submitted by the petitioner that it was on account of the petitioner refusal to blindly endorsing any contract or works order relating to purchase of material that the petitioner is subjected to the impugned order. The petitioner has also alleged that most of the items purchased by respondent no.1 were through contracts from the parties who were directly or indirectly related to other office bears of respondent no.1 organisation. The petitioner also pointed out that she had complained of the aforesaid ground by her letters dated 30.12.1999, 1.1.2000 and 11.1.2000, which are at Annexure 'F' (Colly.). The petitioner also contended that even if the petitioner was appointed by a specific agreement dated 21.9.1999, she has a right of approaching this Court against the impugned order as the same is amounting to violation of the fundamental rights of the petitioner and that the respondent corporation is amenable to writ jurisdiction of this Court.

4. Mr.Paresh Upadhyay, learned advocate for the respondents has filed affidavit in reply contending that the services of the petitioner were utilised by respondent no.1 society on contract basis and that the service conditions of the petitioner were governed by the terms of agreement entered into between the petitioner and the respondent society on the stamp paper dated 21.9.1999; therefore, there is no question of the petitioner being allowed to approach this Court under the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

Mr.Paresh Upadhyay, in the alternative, submitted that respondent no.1 is liable to the service conditions stipulated under clause 7, which is reproduced above and that the decision of the society in case of termination of an employee shall be final and no claim in respect of the same shall be entertained. However, with a view to show his bona fides and to satisfy conscience of this Court being a public organisation, the present affidavit is filed, wherein it is mentioned in para 3.2 as under:

"I say that Govt. of India, Ministry of Health and Family Welfare, National AIDS Control Organization, New Delhi, has by its circular No.T.11012/ 5/ 99. NACO dt.1.11.1999, given detailed instructions to all the State Govt. with regard to the implementation of the National AIDS Control Project Phase II, with the assistance from World Bank. A copy of the relevant part of the said circular is annexed herewith and marked as Annexure I to this reply. From the said circular it is clear that the Gujarat is now classified as a Medium State under the head of Contractual Posts one post of Joint Director (IEC) is sanctioned and no post of Deputy Director is sanctioned. The petitioner was working on the post of Deputy Director but her qualification and experience does not match with the requirements of the post of Joint Director. In any case there could not have been automatic conversion from the post of Deputy Director to that of Joint Director. Under these circumstances continuation of petitioner in the service of the society, would have led to an objectional situation by the audit authorities, more particularly when the project is aided by the World Bank."

It is also stated in para 4.3 of the said affidavit that

in the alternative the services of the petitioner could have been brought to an end under clause 3 of the agreement, but the society has not resorted to that. Although the society was not under an obligation to pay a sum of Rs.15,000/-, being a notice pay in lieu of notice, the same is paid to the petitioner only in order to see that the petitioner does not get a technical ground to challenge the action of the society.

5. In rendering explanation to its action of termination of services of the petitioner, which Mr.Upadhaya for the respondents said, can be better termed as non continuation of services of the petitioner whereunder implementation of the scheme for prevention and control of AIDS Phase II. Mr.Upadhyay for the respondents produced a brochure dated 1.11.1999 which according to him must have been received somewhere in November 1999 by the society. Under the said brochure at Annexure II(b) various states of the Union of India are classified in three categories; major, medium and small states. State of Gujarat falls under medium states and it is at serial no.3. Thereafter, there is another tabular statement which provides for distribution of posts wherein so far as contractual posts are concerned, the same are enlisted, which are 13 in number. Against those posts it is provided as to in case of major, medium and small states, posts will be available to the organizations like the present society, respondent no.1. It is pointed out that post of Deputy Director (IEC) is not available to the states which are falling in the category of medium states. Hence said condition came to be implemented. It is not possible for the respondent society to continue the petitioner. The petitioner was appointed on the post of Deputy Director. It is also pointed out that instead of indulging in long correspondence about unsatisfactory behaviour of the petitioner, the competent authority had conveyed to the petitioner so as to ensure that she improves her performance, but as the same could not be achieved, and in the meantime the event of implementing of Phase II came, the services of the petitioner are not continued by the impugned order.

Mr.N.M. Kapadia for the petitioner submitted that both these explanations put forth by the respondent society are not germane and the same should not be taken into consideration and the petitioner should be granted relief. The learned advocate for the petitioner relied upon a decision in Babu Sukhram Singh v. Ram Dular Singh and others, AIR 1973 SC 204, to agitate that even if the matter is arising out of a contract, writ is

maintainable. Mr.Kapadia for the petitioner has also relied upon the decision in Gujarat State Financial Corporation v. M/s Lotus Hotels Pvt. Ltd., AIR 1983 SC 848; and yet another decision in M/s Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay, AIR 1989 SC 1642. In my opinion, the said authorities have no application on the facts of the present case inasmuch as when the services of the petitioner were governed by a specific agreement entered into between the parties, there is no question of this Court entertaining this petition.

6. Hence the petition is rejected. Rule is discharged. No order as to costs.

(Ravi R. Tripathi, J.)

karim*